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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Estate of Sandra Surprise by and through
10 Richard Surprise, et al.,

11 Plaintiffs,

12 v.

13 FSQ Incorporated, et al.,

14 Defendants.

No. CV-15-01751-PHX-DJH

ORDER

15 This matter is before the Court on Plaintiffs' Motion to Remand (Doc. 12).
16 Defendants have filed a Response in Opposition (Doc. 14) and Plaintiffs have filed a
17 Reply (Doc. 15). Plaintiffs contend that after Defendants filed their Notice of Removal
18 (Doc. 1) on September 1, 2015, Plaintiffs confirmed the identity of the individual referred
19 to as "John Doe Administrator" in the original Complaint. They filed an Amended
20 Complaint (Doc. 10) on September 15, 2015, naming Defendant Susan Goad and
21 identifying her as the Administrator of the Forum at Desert Harbor. Defendant Goad,
22 they contend, is a citizen and resident of Arizona, as are the Plaintiffs. (Doc. 10 at 3). As
23 a result, Plaintiffs argue there is no diversity of citizenship, thus eliminating this Court's
24 subject matter jurisdiction over this case and the basis for Defendants' removal.
25 Accordingly, Plaintiffs are seeking an order remanding this case to the State court.

26 Also pending are Defendants' Motion to Dismiss and/or Stay Proceedings and
27 Compel Arbitration (Doc. 9), and Defendant Susan Goad's Motion to Dismiss (Doc. 21).
28 The Motion to Remand, however, challenges the Court's subject matter jurisdiction over

1 this action. The Court will therefore address the remand motion first, and only if the
2 Court denies the Motion to Remand, will it decide the two other pending motions.

3 **A. Removal Based on Diversity Jurisdiction**

4 As stated in Defendants' Notice of Removal (Doc. 1), Plaintiffs initiated this
5 action in Maricopa County Superior Court on August 13, 2015. Defendants contend in
6 the Notice that the Plaintiffs are all residents of Arizona and that the named Defendants
7 in the Complaint are corporations with their principal places of business in
8 Massachusetts. (Doc. 1 at 2-3). Defendants further assert that the matter in controversy
9 exceeds the sum of \$75,000, exclusive of interest and costs. (Doc. 1 at 3). Accordingly,
10 Defendants contend that this Court has original jurisdiction over this action pursuant to
11 28 U.S.C. § 1332(a)(1) and, as a result, removal is proper pursuant to 28 U.S.C. §
12 1441(b). (*Id.*).

13 28 U.S.C. § 1441 authorizes removal of "any civil action brought in a State court
14 of which the district courts of the United States have original jurisdiction...." "The
15 district courts shall have original jurisdiction of all civil actions where the matter in
16 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
17 between ... citizens of different states." 28 U.S.C. § 1332.¹ "The removal statute is
18 strictly construed against removal jurisdiction, and the burden of establishing federal
19 jurisdiction falls to the party invoking the statute." *California ex rel. Lockyer v. Dynergy,*
20 *Inc.*, 375 F.3d 831, 838 (9th Cir. 2004). "If at any time before final judgment it appears
21 that the district court lacks subject matter jurisdiction, the case shall be remanded." 28
22 U.S.C. § 1447(c).

23 Based on the citizenship of the parties identified in the Complaint and the
24 allegations pertaining to the amount in controversy, it appears that removal of this action
25 was, at the time, proper under 28 U.S.C. § 1441(b). Plaintiffs argue, however, that as a
26 result of filing their Amended Complaint after the case was removed, diversity of
27 citizenship no longer exists and the Court is without subject matter jurisdiction.

28 ¹ A separate basis for original jurisdiction, federal question jurisdiction, is not
applicable here. *See* 28 U.S.C. § 1331.

B. Impact of Amended Complaint on Jurisdiction

As referenced above, Plaintiffs named “John Does I-X Administrator(s) of the Forum” as Defendants in the original Complaint. (Doc. 1-2 at 5).² The Forum at Desert Harbor is a nursing care facility licensed by the State of Arizona and located in Glendale, Arizona. (Doc. 1-2 at 4). Plaintiffs contend that after Defendants filed the Notice of Removal on September 1, 2015, they confirmed the identity of the Administrator of the Forum at Desert Harbor. Plaintiffs then filed an Amended Complaint on September 15, 2015, naming Defendant Susan Goad as the Administrator. (Doc. 10 at 3). In addition, Plaintiffs allege in the Amended Complaint that, like them, Defendant Goad is a citizen and resident of Arizona. (*Id.*). Defendants are not disputing that Plaintiffs satisfied the requirements of Fed.R.Civ.P. 15(a)(1) for amending their Complaint once “as a matter of course.” (Doc. 14 at 2). Plaintiffs therefore argue that because their properly filed Amended Complaint destroys diversity jurisdiction, the case should be remanded.

Defendants, on the other hand, argue that, despite the timely filed Amended Complaint, the case should be analyzed under 28 U.S.C. § 1447(e), which governs joinder of additional defendants after removal of an action to federal court. They contend that the factors relevant to an analysis under that statute weigh against joinder of Defendant Goad and that the Court should not allow Goad to be joined. Defendants argue, therefore, that the motion to remand should be denied.

Although neither Plaintiffs nor Defendants raised it, “[t]here is a split in authorities, unresolved by the Ninth Circuit, on what standard governs ... whether to permit joinder” under these circumstances. *See McGrath v. Home Depot USA, Inc.*, 298 F.R.D. 601, 606 (S.D. Cal. 2014) (collecting cases). The *McGrath* court explained that, relying on the liberal amendment policy of Fed.R.Civ.P. 15(a), some courts have found that plaintiffs are not required to seek leave to add a party after removal even if the effect is to destroy diversity jurisdiction. *See id.* (collecting cases). Other courts have held,

² Citations to attachment numbers and page numbers of filed documents correspond to the attachment numbers and page numbers generated by the Court's electronic filing system, not the pre-printed attachment numbers and page numbers on the original documents.

1 however, “that once a case has been removed to federal court, the court must scrutinize a
 2 diversity destroying amendment to ensure that it is proper under 28 U.S.C. section
 3 1447(e).” *Id.* (collecting cases).

4 Here, the Court need not decide which side of the split it finds more persuasive
 5 because, under either standard, the Court finds in favor of Plaintiffs. The Court will,
 6 however, apply the standard under 28 U.S.C. § 1447(e) to demonstrate that even under
 7 the more restrictive approach, Plaintiffs are entitled to join Defendant Goad.

8 28 U.S.C. § 1447(e) provides:

9 If after removal the plaintiff seeks to join additional
 10 defendants whose joinder would destroy subject matter
 11 jurisdiction, the court may deny joinder, or permit joinder and
 remand the action to the State court.

12 “[T]he decision regarding joinder of a diversity destroying-defendant is left to the
 13 discretion of the district court.” *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 691 (9th
 14 Cir. 1998). In exercising that discretion, the district court should consider several factors,
 15 including “(1) whether the party sought to be joined [i]s needed for just adjudication and
 16 would be joined under Federal Rule of Civil Procedure 19(a); (2) whether the statute of
 17 limitations would preclude an original action against the new defendants in state court;
 18 (3) whether there has been unexplained delay in requesting joinder; (4) whether joinder is
 19 intended solely to defeat federal jurisdiction; (5) whether the claims against the new
 20 defendant appear valid; and (6) whether denial of joinder will prejudice the plaintiff.”
 21 *McGrath*, 298 F.R.D. at 607 (citations and internal quotations omitted); *see also Clinco v.*
 22 *Roberts*, 41 F.Supp.2d 1080, 1082 (C.D. Cal. 1999) (same); *Perryman v. Life Time*
 23 *Fitness, Inc.*, 2009 WL 5185177, *1-*2 (D. Ariz. Dec. 22, 2009) (same).

24 Applying these factors, the Court has no difficulty concluding that Plaintiffs
 25 should be permitted to join Ms. Goad as a Defendant.³ With respect to the first factor,
 26 Defendant Goad, as the Administrator of the facility where the alleged misconduct

27 ³ The Court reaches this conclusion after conducting its own research, reviewing
 28 relevant case law and applying the law to these facts. Plaintiffs’ sparse motion and reply
 failed to cite a single case in support of their position and was of little value to the Court
 in ruling on the motion.

1 occurred, is needed for just adjudication and would be joined under Fed.R.Civ.P. 19(a).
2 Plaintiffs allege in the Amended Complaint that as the Administrator, Ms. Goad was
3 responsible for the operation, management and general administration of the facility,
4 among several other responsibilities. This factor therefore weighs in Plaintiffs favor.
5 (Doc. 10 at 7-8).

6 Regarding the second factor, the statute of limitations may well prevent a new
7 action against Defendant Goad. As Defendants acknowledge in their Response, the
8 statute of limitations may have expired on November 23, 2015 for certain claims and on
9 January 27, 2016 for other claims. Thus, this factor weighs in Plaintiffs' favor.

10 As to the third factor, there was no unexplained delay in seeking to add Ms. Goad
11 as a Defendant. Plaintiffs essentially preserved the right to identify the Administrator by
12 naming a John Doe Administrator in the original Complaint. The Amended Complaint
13 naming Ms. Goad as the Administrator was filed a month and two days after the original
14 Complaint, and fifteen days after the Notice of Removal. Plaintiffs explain that they did
15 not learn the Administrator's identity until after filing the original Complaint. The time
16 that passed before filing their Amended Complaint was not unreasonable and does not
17 constitute an "unexplained delay." The third factor favors Plaintiffs.

18 The fourth factor also favors Plaintiffs. Defendants filed their Notice of Removal
19 nineteen days after Plaintiffs filed the original Complaint. Defendants could see in the
20 Complaint that certain John Doe Defendants were named, which suggested that upon
21 learning their identifications, Plaintiffs would likely seek to amend the Complaint. The
22 Court finds no basis to suggest that the addition of Ms. Goad as a Defendant was
23 intended solely to defeat federal jurisdiction, especially given the alleged significance of
24 Ms. Goad's role with respect to the underlying allegations.

25 Having determined that at least four of the above referenced factors favor
26 Plaintiffs, the Court finds, pursuant to its authority under 28 U.S.C. § 1447(e), that
27 Plaintiffs are permitted to add Ms. Goad as a Defendant in this action. The parties agree
28 that the addition of Ms. Goad as a Defendant destroys this Court's diversity jurisdiction
under 28 U.S.C. § 1332. Because no other basis exists for this Court to exercise subject


1 matter jurisdiction over this matter, Plaintiffs' Motion to Remand will be granted.

2 Accordingly,

3 **IT IS ORDERED** that Plaintiffs' Motion to Remand (Doc. 12) is **GRANTED**.
4 The Clerk of Court shall remand this action to the Maricopa County, Arizona, Superior
5 Court.

6 **IT IS FURTHER ORDERED** that because the Court is without subject matter
7 jurisdiction over this case, the Court issues no decision on Defendants' Motion to
8 Dismiss and/or Stay Proceedings and Compel Arbitration (Doc. 9), and Defendant Susan
9 Goad's Motion to Dismiss (Doc. 21).

10 **Dated** this 1st day of April, 2016.

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13 Honorable Diane J. Humetewa
14 United States District Judge
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